

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Shelton	Team: Squad #11	CCRB Case #: 202003699	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 9:00 PM	Location of Incident: 1 Union Square South	Precinct: 13	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sun, 05/31/2020 10:17 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 05/31/2020 10:17 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. SGT Michael Pomerantz	04481	947364	NARCBMN

Officer(s)	Allegation	Investigator Recommendation
A.SGT Michael Pomerantz	Discourtesy: Sergeant Michael Pomerantz acted discourteously toward an individual.	
B. Officers	Force: Officers used physical force against individuals.	

Case Summary

On May 31, 2020, § 87(2)(b) filed this complaint with the CCRB via the agency's website, as reflected in online complaint #1-1-7982734.

On May 30, 2020, at approximately 9:00 p.m., § 87(2)(b) was attending public demonstrations against police brutality in the vicinity of One Union Square South located at East 14th Street between Broadway and 4th Avenue in Manhattan. She observed Sgt. Michael Pomerantz, of Narcotics Borough Manhattan North, kick an empty trash can in the middle of the street which hit an unidentified civilian (**Allegation A: Discourtesy**, § 87(2)(g)). Unidentified officers then forced unidentified individuals to the ground (**Allegation B: Force**, § 87(2)(g)).

No arrests or summonses related to this incident were identified by the investigation.

The investigation received surveillance footage from the building at One Union Square South via the building's management company (BR 01-02), body-worn camera footage via the NYPD's Legal Bureau (BR 03-27), and handheld footage via NYPD's TARU (BR 28-29), none of which was pertinent to the investigation.

Findings and Recommendations

Allegation A – Discourtesy: Sergeant Michael Pomerantz acted discourteously toward

§ 87(2)(b)

Though external surveillance footage from One Union Square South, the video quality and elements were such that the investigation could not confirm or deny the allegation in that footage. BWC and TARU footage did not capture events at the incident location at the alleged time of the allegation.

§ 87(2)(b) (BR 30) was protesting with her boyfriend, whom she declined to identify, in the vicinity of Union Square. The demonstrators yelled statements at police officers along the lines of, "Fuck the police," and bottles and other debris were being thrown sporadically toward officers. There was at least one trash can on fire in the area and 10-15 minutes prior, there were two or three protesters jumping on top of a police vehicle in the street on East 14th Street near the intersection with Broadway. A line of approximately 10 to 12 uniformed officers wearing helmets were formed across the width of East 14th Street moving from Broadway to 4th Avenue. Sgt. Pomerantz stood right of center in the line of officers. To Sgt. Pomerantz's left were two officers described as a 5'7" to 5'8" tall heavyset white male in his mid-30s with dark hair and small eyes and 5'5" to 5'6" tall white female with dark hair. § 87(2)(b) saw a male officer in uniform behind the line of officers yell, "Move up." The officers moved toward 4th Avenue at a running pace, slower than a sprint. Sgt. Pomerantz came upon an overturned empty trash can in the middle of the street and kicked it forcefully toward a group of approximately six demonstrators walking quickly east with their backs toward officers down East 14th Street. The trash can flew approximately five feet, two to three feet off the ground, and bounced then knocked into the legs of one of the demonstrators in the small group. § 87(2)(b) could not confirm that it hit more than one civilian. This civilian stumbled when hit with the trash can but did not fall. § 87(2)(b) described the victim of this allegation as a black male with a dark complexion in his late teens with short hair wearing a dark t-shirt and dark pants. She observed him get arrested by two unidentified officers after he kicked the trash can back toward the officers but could not make out any details regarding his arrest due to the crowd obscuring her view and did not see him again.

Approximately five to ten minutes later, § 87(2)(b) approached Sgt. Pomerantz at East 14th Street and 4th Avenue and asked why he kicked the trash can. He laughed and rolled his eyes. § 87(2)(b) took two photographs of him at approximately 9:13 p.m. (BR 31-32).

No further information on the alleged victim was obtained by the investigation and he was

thus unidentified. From all available arrest reports (BR 33-35) and summonses (BR 36-47) from the incident date within the confines of the 13th Precinct (the precinct of occurrence) and the surrounding 6th and 9th Precincts, no matches were made between the alleged victim and an arrestee. His identity was not addressed in any video evidence available to the investigation.

Sgt. Pomerantz (BR 48) arrived with his eight-officer roster at East 14th Street and 4th Avenue at approximately 6:00 p.m. to 7:00 p.m. Sgt. Pomerantz did not recall which officers he supervised or worked with on the incident date. Soon after Sgt. Pomerantz arrived, a civilian threw a lit projectile into the back window of a police vehicle. At the direction of unknown supervisory officers, Sgt. Pomerantz and his roster with other officers walked to the vehicle to recover it. Sgt. Pomerantz and his officers helped disperse civilians from around the vehicle just by moving toward it. The whole area had significant debris as civilians had been throwing objects at police officers for some time before Sgt. Pomerantz's arrival. He did not recall any specific trash cans in the street. Sgt. Pomerantz did not think he kicked any trash cans in any streets on the incident date, having no recollection of doing so, nor did he recall causing any trash cans to hit into any civilians. He never observed a trash can hit or collide with a civilian. When described § 87(2)(b)'s specific allegation, Sgt. Pomerantz still did not recall doing such a thing. Sgt. Pomerantz recalled being at East 14th Street and 4th Avenue for most of the night and was likely there at approximately 9:10 to 9:15 p.m. in some sort of perimeter. He recalled no civilians complain to him about his actions. Sgt. Pomerantz identified himself in the two photographs taken by § 87(2)(b). He stated civilians took photographs of him and other officers throughout the entire night but recalled no specific instance.

In determining a reasonable use of force, officers must consider factors including severity of the circumstance, subject's actions, duration of the action, immediacy of the perceived threat or harm to any party, subject's active resistance, subject's attempt of flight to evade arrest, number of subjects and MOS, subject's physical stature, any known violent history, presence of a hostile crowd, and any substance use by the subject at the time NYPD Patrol Guide Procedure 221-01 (BR 51).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Force: Officers used physical force against individuals.

Known Facts and General Descriptions

§ 87(2)(b) could only describe the subjects of this allegation as two or three unidentified officers from the same line of officers that included Sgt. Pomerantz. Sgt. Pomerantz was not alleged

to be a subject of this allegation. No video was obtained depicting this allegation or the subject officers. Video footage was provided to the investigation from all the external cameras at One Union Square South, all slightly above street level, but due to obstructions and image quality this allegation could not be confirmed or denied. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

BWC

Three requests for BWC footage were met with a total of 25 videos returned by the NYPD. Of those videos, 15 were deemed wholly impertinent and the other 10 recorded the public demonstrations at the southern border of Union Square at the approximately incident time. None of these videos depicted the incident location at the incident time nor any events matching the alleged incident.

NYPD Documents Reviewed

The investigation referred to the two sets of documents specific to NYPD personnel policing the protests on the incident date: detail rosters provided by Patrol Borough Manhattan South (BR 49) and arrest reports for arrests made within the confines of the precinct of occurrence (13th) and two neighboring precincts (6th and 9th) (BR 33-35). It is noted that though all rosters listed officers assigned together, specific locations and assignments were not listed for most of those assignments; the most specific location provided was Union Square Park. None of the detail rosters included Sgt. Pomerantz or the specific incident location. In those arrest reports, no matches with the alleged victims' physical descriptions of this allegation or the general incident location were made. Requests for TARU box footage were submitted within the 30-day retention period but were processed by the NYPD after that period. The NYPD provided TARU handheld footage, but this was impertinent to the investigation as it covered events at a different location and time than the alleged incident.

Concurrent Investigations

No other agencies or investigative bodies were identified as conducting any concurrent investigations into these allegations.

On November 20, 2020, IAB confirmed there were no concurrent investigations by the NYPD.

Ranking Officers

No officers, commanding or otherwise, besides Sgt. Pomerantz were confirmed to be on scene at the time of this incident due to lack of specific documentation pertaining to this specific incident, lack of pertinent video evidence, and the lack of any such information specific to these allegations provided by Sgt. Pomerantz during his interview.

Officers Interviewed

Sgt. Pomerantz could not identify any other officers in his vicinity at the time of this allegation. He did not recall any arrest or incident as alleged by § 87(2)(b). He did not observe any officers push a white female or other civilians to the ground.

Allegation Recitation and Disposition

§ 87(2)(b) stated that after the alleged victim of Allegation A was hit with the trash can, he turned around to see what had hit him and kicked it back towards the line of officers. The trash can did not reach the line of officers or hit anyone. Two or three of the officers in line separated from Sgt. Pomerantz ran toward the individual, who ran south down 4th Avenue. The officers took him to the ground near a crowd of protestors and arrested him. § 87(2)(b) could not make out

§ 87(2)(g)

- This is the first CCRB complaint to which § 87(2)(b) has been party (BR 52).
- Sgt. Pomerantz has been a member of service for 11 years and has been subject of 40 other allegations in 15 other CCRB complaints with two substantiations (see officer history):
 - 201200816 involved a substantiated allegation of a frisk. The Board recommended Charges and the NYPD imposed Instructions.
 - 201801182 involved a substantiated allegation of a search of person. The Board recommended Command Discipline B and the NYPD took no disciplinary action.
 - § 87(2)(g)

- This case was not eligible for mediation due to its association with the 2020 demonstrations against police brutality.
- On November 24, 2020, the Office of the New York City Comptroller provided negative results for any related Notices of Claim (BR 53).
- According to the Office of Court Administration, § 87(2)(b) has no history of criminal convictions within New York State (BR 54).

Investigator:	<u> </u>	<u>Inv. Benjamin Shelton</u>	<u>11/25/2020</u>
	Signature	Print Title & Name	Date
 Squad Leader:	<u>Edwin Pena</u>	<u>IM Edwin Peña</u>	<u>11/26/2020</u>
	Signature	Print Title & Name	Date
 Reviewer:	<u> </u>	<u> </u>	<u> </u>
	Signature	Print Title & Name	Date